

NASD Regulation, Inc. Award

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant/Counterrespondent
Stifel, Nicolaus & Co., Incorporated

and

Name of Respondent/Counterclaimant
DeWayne R. Vonfeldt

95-01030

Name of Third-Party Claimant
DeWayne R. VonFeldt

and

Name of Third-Party Respondents
Mark D. Knott, and
Gregory F. Taylor

REPRESENTATION OF PARTIES

Stifel, Nicolaus & Co., Incorporated ("Stifel"), Mark D. Knott ("Knott") and Gregory F. Taylor ("Taylor") were represented by J. Thomas Archer, Esq., of Bryan Cave, St. Louis, Missouri.

DeWayne R. VonFeldt ("VonFeldt") was represented by Dino E. Viera, Esq., of Fellers, Snider, Blankenship, Bailey & Tippens, P.C., Oklahoma City, Oklahoma, and Matthew A. Taylor, Esq., of Duane, Morris & Heckscher, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Stifel filed the Statement of Claim on or about February 27, 1995, and signed the Submission Agreement on or about February 27, 1995. On or about August 11, 1995, Stifel, Knott, and Taylor filed a First Amended Statement of Claim and Reply to Counterclaim and Response to Third Party Claim. On or about January 22, 1996, Stifel, Knott, and Taylor filed a Second Amended Statement of Claim and Reply to Counterclaim and Response to Third Party Claim. On or about December 1, 1997, Stifel, Knott, and Taylor filed a Third Amended Statement of Claim and Reply to Counterclaim and Response to Third Party Claim. NASD Regulation, Inc. Dispute Resolution does not have a Submission Agreement on file for Knott or Taylor.

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VonFeldt filed an Answer, Counterclaim and Third-Party Claim on or about May 1, 1995, and signed a Submission Agreement on April 28, 1995. On or about December 1, 1997, VonFeldt filed a First Amended Answer, Counterclaim and Third-Party Claim.

HEARING INFORMATION

A pre-hearing conference with the arbitrators was held on October 27, 1995 for one (1) session.

Pre-hearing conferences with the Chairman were held on: August 8, 1996 for one (1) session; November 7, 1997 for one (1) session; November 14, 1997 for one (1) session; and January 7, 1998 for one (1) session.

The Arbitration Panel held a hearing on January 12, 13, 14, and 15, 1998 for two (2) sessions each day in St. Louis, Missouri for a total of eight (8) hearing sessions.

CASE SUMMARY

Claimant alleged that: VonFeldt breached his regulatory and contractual duties to Stifel with regard to its Oklahoma operations; VonFeldt breached his employment agreement in that he overdrew his compensation; that he secured a \$265,000 loan from Stifel under false pretenses; VonFeldt failed to repay a \$550,000 loan that became due when there was a good faith basis to believe grounds existed to terminate him for cause; and by failing to properly supervise an employee, Cochran, and the operations of Stifel's Oklahoma public finance office, VonFeldt breached his fiduciary duties of care and loyalty to Stifel, and breached his express contractual duties of supervision, including those set out in Sections 1 and 6 of the employment agreement.

Unless otherwise admitted in his Answer, VonFeldt denied the allegations set forth in the Statement of Claim. VonFeldt stated that: He was wrongfully terminated by Stifel; Stifel breached the subject employment agreement, and through certain officers and directors named herein, has also committed various other tortious acts for which it is liable in damages; Stifel, Taylor and Knott used the promise of filing a clean U-5 to coerce him in to acceding to their demands, and then filed a defamatory and false U-5 for VonFeldt, after his termination, in contradiction of their agreement; the allegations used by Stifel in order to terminate his employment were contrived by Taylor, Knott and other directors on the board in order to trigger substantial monetary liability on the part of VonFeldt under his employment contract as well as to seize control of his profit center; Taylor and Knott also stood to profit greatly by usurping VonFeldt's operations and diverting its substantial revenue flow to their own executive bonus pool, and it was for these reasons they conspired with other directors to fabricate false causes for termination, which have impugned VonFeldt's reputation and caused him to suffer a huge loss of income; there was no good cause for termination, and because in any event VonFeldt performed his duties in good faith, VonFeldt's termination was wrongful and the promissory note must be deemed forgiven; the statements contained in the Form

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U-5 are false and defamatory; because Stifel failed to conduct a proper audit of VonFeldt's Office's operations, heavy losses in the first half of 1994 served to offset the substantial profits made by VonFeldt in the fiscal year ending December 31, 1993; Stifel improperly charged certain expenses to VonFeldt's operations, namely attorney fees, at the insistence of certain board members, including John Goebel, a partner of Bryan Cave, steered millions of dollars worth of Stifel's legal business to his firm; VonFeldt's operations should not have been charged legal expenses generated by an improper conflict of interest; Stifel approved of Cochran's use of American Investment Corporation ("AIC") to invest proceeds from various bond issues, and it hired Coopers & Lybrand to conduct a comprehensive audit of AIC and found no evidence of impropriety; Stifel cannot establish that VonFeldt breached his supervisory duties in bad faith; Stifel's settlement with the SEC was not the result of any wrongdoing alleged against VonFeldt; VonFeldt was not referenced in any manner in the complaint filed by the SEC; and VonFeldt did not violate the non competition covenant in the employment agreement due to the fact that VonFeldt did not resume his securities work until after Stifel ceased its operations in Oklahoma. VonFeldt also asserted a counterclaim against Stifel and a Third-Party Claim against Taylor and Knott.

In his Counterclaim and Third-Party Claim, VonFeldt incorporated all of the allegations set forth in his Answer, and further stated that: Stifel, Taylor, and Knott engaged in an unlawful conspiracy to usurp VonFeldt's operations and terminate his employment; by virtue of the defamatory statements made by or caused to be published by Stifel, Taylor and Knott in connection with VonFeldt's termination, including without limitation, those statements made in VonFeldt's U-5, VonFeldt's reputation was damaged; Stifel, Taylor and Knott used VonFeldt's U-5 in an attempt to coerce him into acceding to their demands.

In their reply to Counterclaim and Third-Party Claim, Stifel, Taylor and Knott incorporated and relied upon all prior allegations set forth in the Statement of Claim filed by Stifel and denied all claims of liability to VonFeldt. Stifel, Taylor, and Knott also made the following additional responses: Stifel did not defame VonFeldt or engage in other wrongful conduct with respect to the filing of his U-5; neither Taylor or Knott filed the U-5 which VonFeldt contends is false, and neither individual terminated VonFeldt's employment agreement; the conduct that Taylor and Knott undertook was fully within the scope of their employment at Stifel; VonFeldt's employment agreement binds Stifel only; Stifel's U-5 is not defamation but is completely truthful and accurate; the filing of a U-5 is mandatory upon the separation or termination of each employee; and the filing of a U-5 is protected, either by a qualified or absolute privilege; everything contained in the U-5 is truthful and accurate and there was no improper use of the U-5 process, and no coercion applied to VonFeldt.

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RELIEF REQUESTED

Claimant requested the following award: For Claim I, Stifel requested an award of \$345,148.90 plus interest of \$84.85 per day; for Claim II, Stifel requested an award of \$550,000, plus pre-award interest of \$259,458.06 as of January 12, 1998, and post-award interest of \$150.39 per day to the date of payment on judgment, the costs of this proceeding, and all other relief as is deemed appropriate; for Claim III, Stifel requested that the panel enter an order directing VonFeldt to indemnify Stifel and to contribute his proportionate share of all liabilities, costs and other expenses which Stifel incurred which are attributable to VonFeldt's wrongful conduct, directing VonFeldt to pay all costs of this proceeding, and awarding Stifel all other and further relief deemed just and proper by the panel. Stifel, Taylor and Knott also requested that the panel dismiss VonFeldt's Counterclaims and Third-Party claims.

VonFeldt requested that Stifel recover nothing under its claim and that VonFeldt be awarded judgment on his Counterclaim and Third-Party Claim in excess of \$6,000,000 jointly and severally against Stifel, Taylor and Knott, plus costs, attorney fees, and such other relief as the panel of arbitrators may deem appropriate.

OTHER ISSUES CONSIDERED & DECIDED

In or about July of 1995, VonFeldt filed a Motion to Dismiss. After review of the motion and response the arbitrators denied VonFeldt's Motion.

Knott and Taylor did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10201 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, and are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

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1. Claimant Stifel, having proven Claim I by a preponderance of the evidence, is awarded the sum of \$265,732.00, plus pre-judgement interest of nine percent (9%), un-compounded, from 9/3/94 through 2/20/1998, inclusive, of \$79,610.00 against VonFeldt.

Total Award for Claim I = \$345,342.00

2. Claimant Stifel, having proven Claim II by a preponderance of the evidence, is awarded the sum of \$550,000.00, plus interest at the rate of 6.88%, compounded semiannually, from 4/27/1992 through 2/20/1998, inclusive, in the sum of \$211,996.00 against VonFeldt.

Total Award for Claim II = \$761,996.00

3. Claim III of Stifel is denied with prejudice.

4. VonFeldt's Counterclaims and Third-Party Claims are, and each of them, denied with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were four (4) pre-hearing sessions with the Chairman x \$300, one telephonic hearing with the panel x \$1,000, and eight (8) hearing sessions x \$1,000 = \$10,200 in forum fees. Pursuant to Rule 10205(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10205 (c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Stifel.

Pursuant to Rule 10205 (c) of the NASD Code of Arbitration Procedure, VonFeldt is liable for, and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the non-refundable Counterclaim/Third-Party Claim filing fee in the amount of \$500 and the Counterclaim/Third-Party Claim hearing session deposit in the amount of \$1,500.

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Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$500 previously paid by Stifel.

Additional forum fees in the amount of \$7,700 (\$10,200 - \$2,500) are assessed by the arbitrators against VonFeldt.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Dwight E. Cole
Dwight E. Cole
Industry Arbitrator, Presiding Chair

/s/

March 24, 1998

Dale W. Roth
Dale W. Roth
Industry Arbitrator

/s/

March 28, 1998

Theresa A. Secrest
Theresa A. Secrest
Industry Arbitrator

/s/

March 25, 1998